



Scarborough Borough Council

Guidelines for the Prevention of Illegal Working

DOCUMENT CONTROL

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REVISION HISTORY (only required where changes made)

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01/08/2006	Elaine Blades	0.1	Creation of Policy
01/04/2013	Elaine Blades	0.2	
09/01/2017	Roger Paterson	0.4	Update of regulations/bodies
28/03/2019	Roger Paterson	0.6	Update on regulations
13/01/2020	Elaine Blades	0.7	Update of: Civil Penalty, documentary evidence, frequency of checks, update of EEA countries
09.03.2021	Debbie Gordon	0.8	Update of Brexit implications on EEA Nationals

DOCUMENT REVISION APPROVALS

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1.0 INTRODUCTION

- 1.1 Under the Immigration, Asylum and Nationality Act 2006, all employers have a responsibility to prevent illegal working in the UK. Under sections 15-25 of the Act employers are required to make document checks on every person they intend to employ. It is a criminal offence to employ someone who has no right to work in the UK. The Act gives a statutory defence against prosecution to employers where they can show they have checked and copied certain original documents. Employers are also obliged to ensure that recruitment practices do not discriminate against individuals on racial grounds.
- 1.2 These guidelines have been updated to include the impact of Brexit and changes in the immigration system.

2.0 WHO DO THE GUIDELINES APPLY TO?

- 2.1 The guidelines apply to all prospective employees to the Council.
- 2.2 The guidelines also apply to managers, staff and administrators who are responsible for undertaking recruitment and selection processes.

3.0 WHY UNDERTAKE ASYLUM AND IMMIGRATION CHECKS?

- 3.1 On 29 February 2008 the Government introduced changes which UK employers need to be aware of to avoid liability for payment of a civil penalty for employing illegal migrants. All employers are required to make basic document checks on every person they intend to employ. In accordance with this, all applicants must provide proof of their eligibility to work in the United Kingdom and therefore all offers of employment must be conditional upon providing the relevant documentation as proof of their eligibility.
- 3.2 In order to avoid discrimination during the recruitment process managers/ supervisors must ensure that they treat all job applicants in the same way. Failure to do so may leave the Council open to prosecution and in the event that an illegal worker is discovered and the necessary checks have not been carried out, this could lead to prosecution and a civil penalty to the Council of up to £20,000 per illegal worker.
- 3.3 These guidelines will help managers to understand what documents must be requested from prospective employees to ensure they can work legally for the Council and so that as an employer the Council can establish a 'statutory excuse' against payment of a civil penalty. Attached to the guidelines are two lists of documents that can be provided: **List A** to establish the person has an ongoing entitlement to work in the UK and **List B** which indicates that the person has an entitlement to work in the UK, but only for a limited period.
- 3.4 These changes make it more difficult for people who overstay their permission to be in the UK, or their entitlement to work, or to remain in employment in breach of the UK's immigration laws.

4.0 THE EUROPEAN ECONOMIC AREA (EEA)

- 4.1 Following the introduction of the new immigration system, employers should continue to carry out right to work checks on all new recruits. The impact of Brexit and the changes to the immigration system will principally affect right to work checks in respect of EEA nationals. The procedure in respect of non-EEA nationals seeking to work in the UK remains unchanged.
- 4.2 However, EEA nationals who entered the UK before 11pm on 31 December 2020 have until 30 June 2021 to apply for settled or pre-settled status under the EU Settlement Scheme ('EUSS'). If successful, this will give them the right to work in the UK.

EEA and Swiss nationals recruited between 1 January 2021 and 30 June 2021

- 4.3 Under the new system, the majority of EEA nationals who arrive in the UK after 31 December 2020 are likely to require a skilled worker visa in order to be able to work unless they benefit from an alternative route of entry (such as Irish citizenship).
- 4.4 For EEA and Swiss nationals being recruited between 1 January 2021 and 30 June 2021, employers can rely on a passport or national identity card from an EEA national. Alternatively, if the individual has been granted permission under the Economic Union Settlement Scheme (EUSS), the individual can choose to share evidence of their right to work using an online service. However, in order not to discriminate on the basis of nationality, employers cannot require EEA nationals to show proof of their status under the EUSS, but they may wish to inform individuals of the EUSS and the potential consequences of failing to apply before the deadline of 30 June 2021.
- 4.5 This does potentially mean that an EEA national could come to the UK on or after 1 January 2021 without immigration permission (i.e. be an illegal worker) and the employer would still have a defence to the civil offence by checking the person's passport. However, if the employer is aware (or has reasonable grounds to believe) that the person does not have immigration permission, they may commit the criminal offence (see above). There is no current guidance as to how employers should deal with this issue.

EEA nationals employed from 1 July 2021

- 4.6 From 1 July 2021 onwards, it is expected that EEA nationals must provide either proof of (pre-)settled status under the EUSS or one of the other prescribed documents under the existing arrangements. The government will publish revised guidance before 1 July 2021 and employers should prepare themselves for further changes.
- 4.7 The government has stated there will be no requirement for retrospective checks to be undertaken in respect of EEA nationals who were employed on or before 30 June 2021.

4.8 Nationals of these EEA countries may work without restriction

- Austria • Italy • Belgium • Latvia • Bulgaria • Liechtenstein • Croatia • Lithuania • Cyprus • Luxembourg • Czech Republic • Malta • Denmark • Netherlands • Estonia • Norway • Finland • Poland • France • Portugal • Germany • Romania • Greece • Slovakia • Hungary • Slovenia • Iceland • Spain • Ireland Sweden.

Nationals of Switzerland are also permitted to work without restriction.

5.0 ELIGIBILITY TO WORK IN THE UNITED KINGDOM

5.1 All successful candidates must be asked to provide evidence of their eligibility to work in the United Kingdom. In order to comply with the Act managers/supervisors must ensure that they follow the steps set out below in respect of all candidates for employment at the interview stage. In addition, confirmation that these steps have been followed should also be received prior to final confirmation of a job offer being made. Detailed Government Guidance on the Steps to follow is available [here](#):

Step 1

5.2 All candidates invited for interview should be asked in writing to provide the following documents. The document must be authentic, an original and relate to the person. If the candidate produces a photocopy, or the document does not appear to be authentic, or it doesn't appear to relate to the person, they must be asked to produce another, suitable document. A standard letter to advise applicants of this requirement is attached at Appendix 1. Details of the documents included on **List A** and **List B** are outlined in Appendix 2 and this information should be enclosed with the letter to candidates:-

- One of the **original** documents, or a combination of original documents specified in **List A**. If the individual is not subject to immigration control, or has no restrictions on their stay in the UK, they should be able to produce a document, or specified combination of documents from **List A**.

Or

- One of the **original** documents, or a combination of documents specified in **List B**. Where the leave to enter or remain in the UK granted to an individual is time limited, the document or documents provided will be specified in **List B**.

Step 2

5.3 In accordance with the Act Managers/supervisors are required to satisfy themselves that the potential employee is the rightful holder of any of the documents that are presented. These documents should also allow the individual concerned to undertake the type of work that he/she has applied for. Managers/supervisors must therefore carry out the following **reasonable steps** when checking all of the documents presented to them by a potential employee:-

- Check any photographs, where available, to ensure that they are consistent with the appearance of the potential employee.
- Check the dates of birth listed to ensure that these are consistent with the appearance of the potential employee.
- Check that the expiry dates have not been passed.
- Check any United Kingdom Government stamps or endorsements to see if the potential employee is able to do the type of work they have applied for.

5.4 In the event that the potential employee provides two documents which have different names, he/she should then be asked for a further document to explain the reason for this. The further document could be a marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.

5.5 **Step 3**

Managers/supervisors must ensure they make a photocopy of the following parts of all the documents shown to them:

- The front cover and all of the pages which give the individual's personal details. In particular, copy any page that provides details of name, nationality, photographs, date of birth, signature, date of expiry and biometric details.
- Copies must be signed and noted as verified copies of the original documents.
- Photocopies should be sent to Human Resources where they will be retained.

Where further verification on submitted documents is required, the Human Resources Team will contact the Home Office for confirmation that the documents are acceptable. Where it is established that the individual is not permitted to work in the UK, the Council will be unable to continue to employ the individual.

5.6 Managers/supervisors should also complete the record of documentary evidence provided by new employees as shown at Appendix 3 and this should be retained on the individual's personal file.

5.7 The selection process will not continue for that individual until suitable documentation can be produced. If the person is unable to produce evidence of their eligibility, they should be referred to the Citizens Advice Bureau.

5.8 It is only necessary to retain the copies for successful candidates and once the appointment has been made, managers/supervisors must destroy the copies taken for unsuccessful candidates.

5.9 From 28 January 2019 an online right to work check was introduced which provides a statutory excuse against a civil penalty in the event of illegal working. Currently the online checking service supports checks in respect of those who hold:

- a biometric residence permit;
- a biometric residence card; or

- status issued under the EU Settlement Scheme (alternatively, these individuals continue to be able to demonstrate their right to work by presenting their EU passport or ID card until the end of the EU-Exit grace period on 30 June 2021); or
- status issued under the points-based immigration system; or
- British National Overseas (BNO) visa; or
- Frontier workers permit

Frequency of Document Checks

- 5.10 For new employees appointed on or after 29 February 2008 and who have provided documents listed under List B upon taking up their appointment, **follow-up checks must be carried out**, the frequency of which depends on whether the documents you are provided with are from Group 1 or Group 2.

Document Type	Excuse Tupe	Frequency of Checks
List A	Continuous	Before employment starts only
List B – Group 1	Time-Limited	Before employment starts and again shortly before permission (as set out in the document checked) expires
List B – Group 2	Time-Limited	Before employment starts and again after 6 months (as set out in the Positive Verification Notice).

Checks after the EU-Exit grace period

- 5.11 There is no requirement for retrospective checks to be undertaken on EEA or Swiss nationals who were employed on or before 30 June 2021. We will maintain a continuous statutory excuse against a civil penalty if the initial right to work checks were undertaken in line with this guidance. Should an EEA or Swiss national be unable to provide us with any acceptable documents because the person has an outstanding application with us for status under the EU Settlement Scheme, or the new points-based immigration system we will need to contact the Employer Checking Service to establish a statutory excuse. Irish nationals will continue to have the right to work and prove their right to work as they do now, for example using their passport. New guidance on how to conduct right to work checks on EEA nationals after 30 June 2021 will be provided in advance of this date.

6.0 APPLICATIONS FROM NON-EEA OR NON-SWISS NATIONALS

- 6.1 The Government operates a Points Based System for managing applications from non-EEA or non-Swiss nationals who wish to come to the UK to work, train or study.
- 6.2 Underpinning the new migration system is a four tier framework. Tier 3 was intended to be a pathway for unskilled immigrants, but the British Government decided there was no need for further unskilled immigration from outside the EU, and therefore this tier has been removed and the other tiers amended. The four tiers are as follows:
- Tier 1 – high value (possessed of exceptional talent, highly skilled, high net worth investor, graduate entrepreneur).

- Tier 2 – skilled workers (jobs that cannot be filled by a UK or EEA worker with a job offer, such as teachers or nurses, intra-company transfers, ministers of religion or sportspersons) – capped at 20,700 a year unless the immigrant earns more than £150,000
- Tier 4 – student (in primary, secondary or tertiary education)
- Tier 5 – temporary migrants.

6.3 Anyone wanting to come to the UK under the Points Based System will need to show that they have enough points to qualify. Points can be earned in different ways depending on the tier.

6.4 Before the individual is eligible to apply, they must have a sponsor. In order to become a sponsor the employer needs to be licensed by the Home Office.

6.5 The Council has not applied to be a sponsor and therefore is not eligible to recruit migrant workers from non-EEA countries, and therefore no such appointments can be made. The recruitment of migrant workers illegally can lead to severe penalties, including unlimited fines and imprisonment.

7.0 RECRUITMENT AGENCIES

7.1 If the Council employs people, having formerly worked as an agency employee, they will also be required to produce evidence of their eligibility. Although recruitment agencies may have made initial checks in order to avoid any risk to the Council, further evidence will be requested.

8.0 TUPE

8.1 Guidance from the Home Office states that where employers acquire staff as a result of a TUPE transfer, they have 60 days' grace to undertake the appropriate document checks. The Council therefore could be prosecuted for failure to undertake checks for employees transferred from another organisation.

9.0 OTHER WORKERS

9.1 The Council is not liable for:-

- Employees who work for an employment agency.
- Employees of a contractor undertaking work on its behalf.
- Self-employed people or freelancers (unless the actual employment relationship suggests otherwise).

10.0 RECORDS

10.1 All correspondence and associated documentary evidence will be held on the employee's personnel file and be available for inspection by the employee on request.

11.0 FURTHER INFORMATION

- 11.1 Further information on these guidelines can be obtained from the Human Resources Team in the first instance.
- 11.2 Employees who are members of a Trade Union may also obtain further information from their Representative.
- 11.3 The Home Office operates a Sponsorship and Employers' Helpline on 0300 123 4699 from Monday to Thursday between 9.00 am and 4.45 pm and 9am to 4.30pm on Friday - educatorshelpdesk@homeoffice.gsi.gov.uk

LETTER TO APPLICANTS

Dear [INSERT NAME](#)

Documentation Required

In order to comply with the requirements of the Immigration, Asylum and Nationality Act 2006 the Council requires all candidates invited to interview to bring the documents detailed in the attached document. A photocopy of the appropriate document will be made and the original returned to you immediately.

If you have any queries about this matter, please contact [INSERT NAME](#) on [INSERT TELEPHONE NUMBER](#)

Yours sincerely

[INSERT NAME](#)
[INSERT JOB TITLE](#)

Immigration, Asylum and Nationality Act 2006**List of acceptable documents****List A**

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the UK.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the EEA or Switzerland.
3. A resident permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office to a national of an EEA country or Switzerland.
4. A permanent residence card issued by the Home Office to the family member of a national of an EEA country or Switzerland.
5. A current Biometric Residence Permit issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6. A current passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
7. An current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
8. A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of holder's parents/adoptive parents, **when produced in combination with** an official document giving the person's permanent National Insurance and their name issued by a Government agency or previous employer.
9. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
10. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

List B

Group 1

1. A current passport or travel document endorsed to show that the holder is allowed to stay in the UK and is allowed to do the type of work in question.
2. A current Biometric Residence Permit issued by the Home Office to the holder which indicates that the person named in it can stay in the UK and is allowed to do the work in question.
3. A current residence card or document issued by the Home Office to a family member of a national of an EEA country or Switzerland.
4. An Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay in the UK, and is allowed to do the type of work in question, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.

Group 2

1. A certificate of application issued by the Home Office to or for a family member of a national of a EEA country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old **when produced in combination with** a positive verification letter from the Home Office Employer Checking Service.
2. An Application Registration Card (ARC) issued by the Home Office stating that the holder is permitted "Allowed to work" or "Employment Permitted" to take employment, **when produced in combination with** a positive verification letter from the Home Office.
3. A **Positive Verification Notice** issued by the Home Office Employer Checking Service to the employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.



RECORD OF DOCUMENTARY EVIDENCE PROVIDED BY NEW EMPLOYEES

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

Name: _____

Post Title: _____

Post No: _____

Date of Interview: _____

**Type of Document
Provided:** _____

I certify that the attached is a photocopy of the documents provided by the above new employee in accordance with the requirements of the Immigration, Asylum and Nationality Act 2006.

Signed: _____

Date: _____